

regard to this property, other than Isaac, Jesse Hughes may, I think, be considered as trustee, *de son tort*, and for the use of it, liable to account in equity. *Hill on Trustees*, 173.

Upon the whole, then, I am not disposed now, at this stage of the cause, to turn the plaintiff round to sue at law, when it is most apparent it would be equivalent to an absolute and final decision against him. The case must, therefore, go to the Auditor for the purpose of taking an account of the value of the hires and the services of the slaves, (other than Isaac,) from the period of the death of Josiah Hughes to the date of the demand preparatory to the institution of the action of detinue. And in taking the account, the Auditor will be governed by the usage of the court in reference to averaging the testimony. The Auditor will also charge the defendant with the amount of sales of the personal effects of the deceased Josiah Hughes, as proved by John Daugherty, or otherwise, and credit him with any sums of money Jesse Hughes may have paid for or on account of Josiah, and also with any sums of money which may be shown to be due him from said Josiah, and also for taxes paid by him, or which he may show, he, the said Jesse Hughes, has paid on the estate of the said Josiah.

But, in the account so to be taken, the defendant is not entitled to be credited with moneys which the said Jesse may have paid or advanced for the children of said Josiah since his death, such sums, so paid, not being legal offsets to the claim of the complainant, as administrator of Josiah Hughes, against him, as administrator of Jesse Hughes.

Interest must be allowed the complainant, upon the hire or value of the slaves from the end of each year, but no rests, or compounding of interest will be allowed.